



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33079739

Date: AUG. 21, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a jeweler, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), including items such as awards, published material in certain media, and scholarly articles. If those standards do not readily apply to the individual’s occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner began making traditional Uzbek jewelry in 2010. The record reflects his involvement at various craft festivals since that time. He arrived in the United States as a B-2 nonimmigrant visitor in September 2022, and he seeks to make and sell jewelry in [REDACTED] New York.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). When he initially filed the petition, the Petitioner did not clearly state which of the criteria he claimed to satisfy. In response to a request for evidence (RFE), the Petitioner claimed to have satisfied four of the criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media; and
- (vi), Authorship of scholarly articles.

On appeal, the Petitioner claims to have met additional criteria, which we will address further below. First, we will explain why we agree with the Director's conclusion that the Petitioner had not satisfied any of the claimed criteria.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner claimed to satisfy the requirements of this criterion through his membership in the Hunarmand Association in Uzbekistan. As explained below, we agree with the Director's conclusion that the Petitioner has not submitted sufficiently reliable evidence to meet the regulatory requirements.

The Petitioner initially submitted letters from claimed officials of Hunarmand Association, on letterhead that reads: "Regional Administration of [REDACTED] Association / HUNARMAND / Folk craftsmen, Artisans and Painters of the Republic Uzbekistan [sic]." One letter, signed by the "Head of 'Hunarmand' Association," indicated that membership "is open only to highly skilled masters who are among the few on top of their fields and requires outstanding achievements of its members, as judged by nationally or internationally recognized experts in the respective field of folk art." The official stated that the Petitioner "was accepted to Hunarmand Association in 2010" based on the recommendation of "an internationally

known art critic and the Uzbek applied arts researcher and a nationally and internationally recognized expert in the Jewelry of traditional Uzbek folk arts.”

One of the recommending individuals provided his own letter, stating: “in 2015, as a member of the Art Experts Council of Hunarmand Association of Uzbekistan . . . I recommended [the Petitioner’s] admission to Hunarmand Association based on his outstanding achievements in the field of Uzbek traditional Jewelry art products.” We also note that the submitted letters disagree as to whether the Petitioner became a member of Hunarmand in 2010 or 2015. The Petitioner’s translated membership certificate shows a date of issuance several years later, in May 2022, with no indication that the Petitioner was a member before that date.

In the RFE, the Director asked for “[t]he section of the association’s constitution or bylaws which discuss the criteria for membership” and “the qualifications required of the reviewers on the review panel of the association,” along with “[i]nformation to establish that the individuals who review prospective members’ applications are recognized as national or international experts in their disciplines or fields.”

In response, the Petitioner submitted a document with the heading “Extract From Hunarmand By-Laws.” The relevant portion of the document indicates that, “[t]o be considered for membership, artists and craftsmen must have a proven record of outstanding achievements in their field.” The document lists the following examples:

- Winning prestigious awards or competitions
- Having their work exhibited in major galleries or museums
- Writing or publishing books or articles on their craft
- Teaching or mentoring other artists and craftsmen
- Making significant contributions to the preservation of Uzbek art and culture

The document is in English, with no indication that it has been translated from Uzbek, Russian, or any other language. We agree with the Director’s determination that the Petitioner did not confirm the source, and therefore the authenticity, of this document.

The Petitioner submitted a printout from the website of Intangible Cultural Heritage of Uzbekistan (ICH), which indicates that Hunarmand was “founded by the Decree of the President of the Republic of Uzbekistan No. 1741 ‘On Measures of State Support for further development of folk arts and crafts’ from March 31, 1997.” The ICH printout does not indicate that membership is limited to individuals with outstanding achievements. Rather, it describes Hunarmand as an organization that serves all artists and artisans. The Petitioner did not submit a copy of Decree No. 1741, which created Hunarmand, or any governing document directly attributed to Hunarmand.

On appeal, the Petitioner asserts that the Director did not consider a previously submitted letter from Hunarmand’s chief executive officer, attesting to the recognition of the individual who claimed to have recommended the Petitioner for membership. The Director mentioned this letter in the denial notice, saying the Petitioner had submitted it “[i]n support of the author’s claims [to be] a nationally and internationally recognized expert.” We note that the Hunarmand letterhead on this document, which does not mention the Petitioner, is visibly different from the letterhead on other correspondence attributed to

Hunarmand officials. All versions of the letterhead in the record refer to Hunarmand's regional office in [redacted] rather than the organization at a national level.

The Petitioner does not address the other issues raised by the Director, discussed above. It is the Petitioner's responsibility to resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

We agree with the Director that discrepancies and omissions in the record lead to the conclusion that the Petitioner has not met his burden of proof to establish that Hunarmand requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner stated that he "often represented the country at international contests and exhibitions," where he won "a lot of international awards." In this introductory statement, the Petitioner did not identify any specific prizes or awards.

A letter attributed to the director of the [redacted] Uzbekistan, stated that the Petitioner "took part in the contest [redacted] – 2015," where he took high places in the category 'Best Craftsman.'" The official did not claim to have been involved in that competition and did not establish that he had the authority to make attestations on behalf of its organizers.

The Petitioner submitted copies of certificates acknowledging that the Petitioner participated in various exhibitions, but the Petitioner did not establish that the certificates, or participation itself, are nationally or internationally recognized prize or awards. Most of the participation certificates appear to be from municipal or regional officials.

In the RFE, the Director stated that the Petitioner had not shown that the certificates amount to prizes or awards, or that they are nationally or internationally recognized. In response, the Petitioner stated that he "was on multiple occasions the recipient of national and international prizes, awards, and certifications." He asserted:

Arguably the main source of his awards and certificates is the [redacted] Festival in [redacted] Uzbekistan, which is widely known for its celebration of the region's rich history and vibrant culture. . . .

. . . Winning a prize at the [redacted] Festival is a rather significant achievement that brings with it several benefits including: national & international prestige and recognition, significant financial rewards . . . , and widespread promotion and media exposure to the public and potential future clients and sponsors.

. . . .

. . . The Beneficiary was one of two prime winners – out of almost 600 participants – of the festival in 2021, and was awarded [redacted] by the President of Hunarmand for his achievements.

The Petitioner submitted a letter attributed to “the director of the ‘Hunarmand Association’ of [redacted] city,” who stated that the Petitioner “became the winner and laureate at the exhibition [redacted] [redacted] and “he received [redacted] as a gift from the President.” This official stated that the Petitioner received [redacted] in 2022, not 2021. The Petitioner did not submit documentary evidence to establish the national or international recognition of prizes from the [redacted]

The official’s letter included a photograph of [redacted] next to an image of an English-language certificate awarded to the Petitioner “for active participation in the [redacted] [redacted] Art Festival” in [redacted] in 2022. The Petitioner also submitted a copy of a [redacted] from 2022, indicating that [redacted]

In the denial notice, the Director stated that the submitted materials do not establish that the Petitioner won [redacted] as a prize or award. The Director also stated that a number of key assertions regarding the Petitioner’s claimed prizes and awards lack the necessary corroboration.

On appeal, the Petitioner maintains that [redacted] is a “presidential prize.” The Petitioner does not address the evidentiary deficiencies that the Director identified. Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998).

We agree with the Director’s conclusion and observations. We add that the Petitioner did not submit evidence to show national or international recognition of prizes or awards offered at the [redacted] Festival or other exhibitions in which he has participated.

The Petitioner has not met his burden of proof to establish his receipt of nationally or internationally recognized prizes or awards for excellence in his field of endeavor.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner initially submitted three items intended to satisfy this criterion:

- A translated Russian-language article from 2022, from a newspaper with a title that translates to *The People’s Word*, calling the Petitioner “a famous young representative” of a “family dynasty” that has created jewelry in [redacted] for four generations;
- An undated brochure in Russian and English, with the title *Jewelry art of* [redacted] which includes photographs of the Petitioner and which incorporates, without attribution, the entire text that appeared in the *People’s Word* article; and

- An undated, translated Russian-language article with the title [redacted] from an unidentified website, describing a jewelry exhibition with particular attention to the Petitioner and his work.

None of the articles include the required author credits, and only the first article is from an identified publication.

In the RFE, the Director stated that the submitted materials do not meet the regulatory requirements, and that the Petitioner had not shown that any of the materials appeared in professional or major trade publications or other major media. The Director requested circulation data and other information to show that the materials meet the regulatory requirements.

In response, the Petitioner provided a name for the author of the *People's Word* article, but that name does not appear to be present on the Russian-language article reproduced in the record. The Petitioner stated that *The People's Word* "is one of the most famous newspapers in Uzbekistan" with a circulation of "about 50,000 copies." The Petitioner did not submit evidence to corroborate these assertions. The Petitioner submitted a printout from *Wikipedia*, which called *The People's Word* a government-run "Russian-language newspaper published from Uzbekistan," but provided no other information about the paper, or its circulation.

The Petitioner also referred to [redacted] as a "famous article," but did not say where it was published, who wrote it, or how the article is "famous."

In the denial notice, the Director stated that information from user-edited sites such as *Wikipedia* lack probative value because there is no assurance about its reliability. *See Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008). Even then, the *Wikipedia* article did not corroborate any of the Petitioner's specific claims about *The People's Word*.

On appeal, the Petitioner repeats prior claims, and now asserts that *The People's Word* has a circulation of 60,000 copies. The Petitioner states: "An article in 'People's Word' of Tashkent about a talented jeweler from [redacted] would be a considerable honor within Uzbekistan" because "'People's Word' is a well-established newspaper in the capital city. Having his work featured there would put [him] in front of a large audience and establish his reputation within Uzbekistan." As noted above, statements in a brief or notice of appeal are not evidence and have no evidentiary weight. The Petitioner has not overcome the Director's determination that the Petitioner has not shown that the published material meets the regulatory requirements.

The Petitioner has not met his burden of proof to show that he has been the subject of published material in professional or major trade publications or other major media.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner did not initially claim to have satisfied this criterion. In response to the RFE, the Petitioner established that he had written a book called [redacted] Web printouts indicate that the book is available for download from Academia and Library Genesis, and they identify

the book's publisher as BookBaby. The book includes a history of jewelry in photographs and descriptions of types of such jewelry, and information about materials and how they are shaped into traditional jewelry.

In the denial notice, the Director stated that the book's publication date occurred after the issuance of the RFE, and noted that BookBaby is a "distribution network for self-published authors." The Director concluded that the Beneficiary's self-published book is not a scholarly article for a learned audience, but rather it provides more basic information for a general readership.

On appeal, the Petitioner asserts: "While [his] book may not be published through traditional academic channels, it is demonstrably accessible to the relevant scholarly community."

We note that the printouts from the websites offering downloads of the Petitioner's book show the publication date as 2021. The 2023 date that the Director noted appears to be the date it became available on Library Genesis.

But the larger issue is that the Petitioner has not shown that his book is a scholarly article published in professional or major trade publications or other major media. A scholarly article should be written for learned persons in a particular field. "Learned" is defined as "having profound knowledge gained by study." *See generally* 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policy-manual>. In evaluating whether a submitted publication is a professional publication or major media, relevant factors include the intended audience (for professional journals) and the circulation or readership relative to other media in the field (for major media). *Id.*

The Petitioner refers to "the relevant scholarly community," but does not explain what that community is. The tone and apparent reading level change from section to section. Some parts of the book include detailed instructions that presume the reader's familiarity with metalworking, but other parts are at a much more introductory level, for instance explaining the difference between brass and bronze. Some of the text appears to be promotional in nature, such as passages that read "our experienced craftsmen create unique and exquisite chains by hand" and "[i]t is the amazing speed of production that allows us to meet the needs of our customers."

The Petitioner acknowledges that his book has not been published in the traditional sense. The petitioner has not shown or claimed that his self-published book appeared in a professional journal. The Petitioner has not provided download, circulation, or readership statistics to establish that his book is a major trade publication or other major media. A self-published book submitted without this information does not satisfy the regulatory requirements.

The Petitioner has not met his burden of proof to show his authorship of scholarly articles in the field, in professional or major trade publications or other major media.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.
8 C.F.R. § 204.5(h)(3)(vii).

Initially, the Petitioner stated that he "presents his work at national and international conferences, exhibitions and competitions," but did not directly claim to satisfy the criterion relating to display.

In the RFE, the Director stated that the Petitioner had not submitted evidence to “indicate that the beneficiary created any work that was displayed at any venue.” In response, the Petitioner stated that he “meets the following criteria”; the four he listed did not include display.

In the denial notice, the Director noted that the Petitioner’s response to the RFE included “no further claims nor any additional evidence . . . to address this criterion.” The Director concluded that the record does not contain “objective documentation that the beneficiary displayed their work at any artistic exhibitions or showcases.”

On appeal, the Petitioner states that he has submitted “evidence of [his] work being displayed at various artistic exhibitions.” The Petitioner does not describe this evidence in any detail or explain how it satisfies the regulatory requirements.

The Petitioner has submitted copies of several certificates indicating that he participated in cultural festivals and an “exhibition of industrial products,” but the certificates do not describe the nature of the participation. Therefore, the certificates are not sufficient evidence that the Petitioner displayed his work. Also, evidence of public display is not sufficient. The Petitioner must establish that the venues where his work was displayed were *artistic* exhibitions or showcases. *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

The Petitioner’s initial filing was ambiguous with regard to this criterion. When the Director gave the Petitioner an opportunity to clarify and supplement the record, specifically raising the issue in the RFE, the Petitioner’s response did not include any direct claim to have satisfied the display criterion. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

We conclude that the Director did not err in determining that the Petitioner had not met his burden of proof with respect to display of his work at artistic displays or exhibitions.

The Petitioner’s appellate brief includes assertions about several other regulatory criteria that the Petitioner did not claim when he first filed the petition or in response to the RFE. The Petitioner quotes the regulation at 8 C.F.R. § 204.5(h)(3)(ix), pertaining to evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. He also claims a “critical role as a judge in the [] Exhibition.” This language may refer to participation as a judge of the work of others under 8 C.F.R. § 204.5(h)(3)(iv) or a leading or critical role for distinguished organizations or establishments under 8 C.F.R. § 204.5(h)(3)(viii).

Raising these new claims for the first time on appeal does not identify any erroneous conclusion of law or statement of fact in the Director’s decision as required by 8 C.F.R. § 103.3(a)(1)(v). Furthermore, the new materials submitted on appeal do not establish eligibility. The Petitioner submitted figures for his claimed earnings in Uzbekistan, and salary surveys for jewelers in the United States, but this information does not show that he earned a high salary or other significantly high remuneration in relation to other

jewelers in Uzbekistan. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1), which indicates that we consider salary figures relevant to the applicable work location.

A newly submitted letter, indicating that the Petitioner served as a judge at a craft exhibition in 2019, relates to 8 C.F.R. § 204.5(h)(3)(iv). Detailed discussion of this evidence would not change the outcome of the appeal because the Petitioner has not established that he meets at least two other initial criteria.¹

It is significant that, in response to the RFE and again on appeal, the Petitioner made new claims, asserting that they are of particular significance, but not explaining why he did not include this important information when he initially filed the petition.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten lesser criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has submitted information indicating that he is a respected jeweler in [REDACTED] but the evidence in the record does not consistently and credibly show that he has earned a degree of recognition of his work that indicates the required sustained national or international acclaim and demonstrates a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.

¹ *See INS v. Bagamashad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).